

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A
SHORELINE CONDITIONAL USE PERMIT
ISSUED BY GRAYS HARBOR COUNTY TO
DANIELS CEDAR PRODUCTS, INC.,

DANIELS CEDAR PRODUCTS, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

SHB No. 80-32

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

This matter, the request for review of a substantial development permit issued with a conditional use by Grays Harbor County, but denied by the Department of Ecology (DOE), came before the Shorelines Hearings Board, Nat Washington (presiding), James S. Williams, Robert S. Derrick and Marianne Craft Norton at a hearing on December 5, 1980, in Lacey, Washington.

This matter was heard in conjunction with PCHB No. 80-198, a case

1 involving the same parties, the same subject matter and relating to a
2 request for review by Daniels Cedar Products, Inc., of a regulatory
3 order issued by DOE under RCW 90.48.120 of the Water Pollution Control
4 Act.

5 Appellant Daniels Cedar Products, Inc., was represented by its
6 president David H. Daniels; respondent was represented by Jeffrey D.
7 Goltz, Assistant Attorney General.

8 Having heard the testimony, having examined the exhibits, having
9 considered the contentions of the parties, and Board member David
10 Akana, having read the record of the proceedings, the Shorelines
11 Hearings Board makes these

12 FINDINGS OF FACT

13 I

14 Appellant Daniels Cedar Products, Inc., (hereinafter "Daniels
15 Cedar" or "appellant") operates a cedar products mill which produces
16 shakes, shingles and hog fuel. The mill is located in a portion of
17 section 11, township 17 north, range 9, W.W.M. in Junction City, Grays
18 Harbor County on property belonging to Burlington Northern. The mill
19 is adjacent to a marsh (hereinafter "Elliot Marsh") which is
20 contiguous with Elliot slough, a backwater of the Chehalis River.

21 Commencing in 1977 Daniels began disposing of cedar wood waste by
22 depositing it in Elliot Marsh on property adjacent to the mill
23 belonging to Burlington Northern and Weyerhaeuser Timber Company. The
24 cedar waste thus deposited has formed a solid waste fill which has an
25 area of about one acre and an average depth of about 5 feet, as shown
26

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 on Exhibit R-16. No impervious fill or dike prevents wood waste
2 leachate from entering the waters of Elliot Marsh.

3 Daniels Cedar had no permit of any kind authorizing it to deposit
4 solid waste material in the marsh which is a part of the shorelines of
5 the state and subject to the provisions of chapter 90.58 RCW and the
6 Grays Harbor County Shoreline Master Program (hereinafter "GHSMP").

7 The land involved is a shoreline of statewide significance which
8 is classified as urban by the GHSMP.

9 II

10 In 1979, as the result of a letter of complaint, the Grays Harbor
11 County Planning Department notified Daniels Cedar that its woodwaste
12 filling operation was in violation of the Shorelines Management Act
13 and directed it to discontinue this activity. It was also told it
14 would be necessary to apply for a shoreline substantial development
15 and conditional use permit. The Grays Harbor County Shoreline Board
16 on July 14, 1980, granted Daniels Cedar a substantial development and
17 conditional use permit authorizing the continuance of the already
18 emplaced fill for the purpose of storing and sorting logs. The
19 Department of Ecology, however, denied the conditional use permit. It
20 is from this denial that appellant has appealed.

21 III

22 In addition to the regulations relating to conditional use
23 permits, the following provisions of the GHSMP bear directly on this
24 appeal.

25 Chapter 6 section 4 provides:

26 Where landfill does occur, the fill material used
27 shall be such that the leachate resulting from it

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 will cause no more serious a degradation in water
2 quality than naturally occurring leachate from
surrounding lands.

3 Chapter 2 section 7(b) provides:

4 Existing solid waste landfills in shoreline areas
5 should be abated as soon as possible and no new solid
6 waste landfills should be permitted in shoreline
areas.

7 IV

8 We find that the cedar waste landfill placed by Daniels releases
9 toxic leachates which are contaminating waters of the state and are
10 causing more serious degradation of water quality than naturally
11 occurring leachates from surrounding lands.

12 Dead leaves, limbs, down timber and other debris from natural
13 vegetation will produce some leachate, but it will be released at a
14 much slower rate and in a much lower concentration than that released
15 from the cedar waste in the Daniels landfill. Thus, the resulting
16 degradation of water quality by the natural leachate is much less
17 serious than that released from cedar waste.

18 V

19 We find that cedar waste is solid waste within the purview of
20 GHSMF chapter 2 Section 7(b). It is so considered by the Grays Harbor
21 County Health District which requires a solid waste permit for its
22 disposal.¹

23 1. See Yount v. Snohomish County, SHB Nos. 108 and 112 (1974),
24 aff'd sub nom. Hayes v. Yount 87 Wn.2d 280 (1976), which held that
25 wood waste is solid waste.

VI

Since the wood waste in the Daniels fill is not isolated from water action, ground water from a higher elevation, water in the marsh and direct rain falling on the fill, all such waters carry leachate from the fill into the marsh.² The marsh is also subject to daily tidal action which also aids in the release of leachate into the marsh. The receding tide and the normal easterly flow of water from the marsh to Elliot Slough combine to transport the leachate into Elliot Slough and on into the Chehalis River.

VII

Elliot Marsh, and others like it, produce organic material which breaks down into minute particles known as detritus. Detritus is a major food item for small organisms which, in turn, are the major food source for juvenile salmon and most other juvenile fish. Wood waste leachate is toxic to these small organisms and inhibits their growth.

Elliot Slough and the lower Chehalis River, which are both somewhat saline, are important temporary habitation sites for juvenile salmon on their way to the ocean. They are born in fresh water and in the process of traveling to the ocean, they must spend a transition time in lightly saline water before venturing into the highly saline water of the ocean. Thus, any diminution in the numbers and quality of

2. Under similar circumstances the Shorelines Hearings Board found in Brueher and Grays Harbor County v. DOE, SHB No. 79-18 that: Unless wood waste landfills are totally isolated from water, they produce toxic leachates and contaminate waters.

1 the small food organisms in the marsh, slough and river will have an
2 adverse impact on juvenile salmon migrating downstream and on resident
3 juvenile fish as well.

4 VIII

5 The DOE on December 1, 1980, took two samples of water from Elliot
6 Marsh. Sample No. 1 was taken from water which was dark in color and
7 appeared to be affected by leachate. It was taken close to the fill
8 on the easterly side and in the path of the flow of water from the
9 fill area. Sample No. 2 was taken from lighter colored water at a
10 point northerly and westerly of the fill at a place not in the path of
11 the flow of water from the fill area. Sample No. 2 was the control
12 sample.

13 The samples, when tested, showed a high concentration of leachate
14 in sample No. 1 and a low concentration in No. 2. Sample No. 1 had
15 eight times as much tannin and nine times as much lignin as the
16 control sample (No. 2). Leachates from wood waste consist principally
17 of lignin or tannin.

18 IX

19 By filling the marsh the appellant not only introduced pollutants
20 into the water of the marsh, but also reduced the effective area of
21 the marsh for wildlife habitat and for the production of food for fish
22 and wildlife. In addition, the fill reduced the effective flood water
23 storage capacity of the marsh and increased the danger that adjacent
24 property would be flooded in the future.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

GHSMP chapter 2(c), section 3 specifically provides that a wood waste fill may only be accomplished in an urban environment after securing a conditional use permit.

II

A conditional use must be denied unless the wood waste fill can meet the conditional use requirements of both WAC 173-41-140(1) and GHSMP chapter 33.

WAC 173-14-140(1) states:

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

(a) That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the master program.

. . .

(d) That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located.

(e) That the public interest suffers no substantial detrimental effect.

. . .

(3) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 for other developments in the area where similar
2 circumstances exist, the total of the conditional
3 uses should also remain consistent with the policies
of RCW 90.58.020 and should not produce substantial
adverse effects to the shoreline environment.

4 III

5 The burden of proof in this appeal was on the appellant.
6 Appellant has not shown that the wood waste fill will cause no
7 unreasonable effects upon water quality and aquatic life; that the
8 fill will be consistent with the policies of RCW 90.58.020 and the
9 policies of the master program; and that the public interest will
10 suffer no substantial detrimental effect, as required by WAC
11 173-14-140(1).

12 In addition, appellant has not shown that the cumulative effects
13 of similar developments in similar circumstances would be consistent
14 with RCW 90.58.020 and would not produce substantial adverse effects
15 upon the shoreline environment. See WAC 173-14-140(3).

16 IV

17 Not only did appellant fail to sustain its burden of proof, but in
18 addition the respondent DOE, although not required to do so,
19 affirmatively established that appellant's wood waste fill was
20 inconsistent with the policies of RCW 90.58.020 and the master
21 program; that the fill would adversely effect water quality and
22 aquatic life; that the public would suffer substantial detrimental
23 effects and that such fills cumulatively could have an adverse
24 effect. Specifically, it was clearly established that the wood waste
25 fill would violate GHSMP chapter 6 section 4 and chapter 2 section 16.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

V

It may be argued that this decision and the decision of the Board in Brueher and Grays Harbor County v. DOE, SHB No. 79-18 (1979) have rendered nugatory the provision in GHSMP chapter 20 section 3 which allows wood waste fills as conditional uses, but such is not the case.

It does appear extremely difficult for a wood waste fill located in an intertidal marsh to meet the conditional use requirements of WAC 173-14-140. On the other hand, if the fill were to be placed upland in a shoreline area where the leachate could be prevented from getting into the waters of the state, the issuance of a conditional use permit might well be found to be proper.

VI

Appellant has failed to carry its burden of proof. Accordingly, the decision of the Department of Ecology should be affirmed.

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

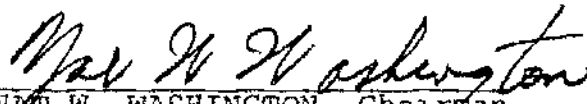
From these Conclusions the Board enters this

ORDER

The decision of the Department of Ecology disapproving the permit is affirmed.

DATED this 1st day of June, 1981.

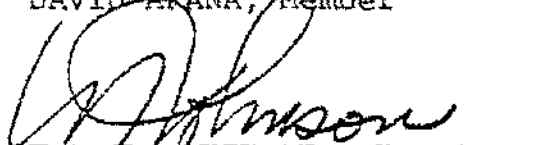
SHORELINES HEARINGS BOARD


NWT W. WASHINGTON, Chairman


JAMES S. WILLIAMS, Member


ROBERT S. DERRICK, Member


DAVID AKANA, Member


WILLIAM A. JOHNSON, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER